



*From the Law Office of Ronald H. Gitter, Esq.*

Addressing the Realities of Residential Real Estate

August 21, 2010

## Brokers and Board Packages



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### Standard Operating Procedure

Those of us in the biz know the drill. Once an offer is accepted, the buyer goes about the process of putting together his or her "[Board Package](#)." The purchase application, together with tax returns, copies of brokerage account statements, personal and business references, credit report authorizations and other personal data are

assembled for perusal by the seller's broker before submission of the whole enchilada to the managing agent for the co-op or condo. Well, what happens if the buyer wants to submit his or her application directly to the managing agent without prior review by the seller's broker, or the buyer's broker, for that matter?

### Upsetting the Proverbial Apple Cart

As it turns out, nothing. There is no requirement in the standard form co-op or condo contract that obligates a buyer to submit documents to the seller's broker for review prior to submission to the managing agent.

Although the exercise is time tested and usually works well, particularly for first time buyers whose personal and business reference letters can often seem like postcards from camp, the buyer is under no obligation to allow the seller's broker to review the package before it's submitted. Ouch. But wait a minute, what if the buyer is much more sophisticated, or famous, or has serious privacy concerns, perhaps submitting the package directly to the managing agent is a good way to preserve confidentiality, particularly if it's a fancy shmancy Board package of a high profile buyer. Then again, maybe not.

### Connecting the Dots...

Many times offers are accepted based upon the review by the broker of the initial financial information provided by the buyer, to insure that the buyer actually has the financial wherewithal to purchase the apartment and the appropriate social and business pedigree for the particular building, in the case of a co-op. Sometimes the buyer's presentation when the offer is made, does

not match up with the actual disclosures in the formal Board Package. In some cases, those missteps are minor and the brokers can still put the information in the best light. In other situations, there are out and out misrepresentations that were made at the time of the offer's acceptance and the candidate has no shot of being approved by the Board (and may run the risk of losing his or her deposit).

Unless the brokers have the opportunity to review the Board package in advance, there is no way of telling until it's too late, that someone has misstated his or her profile, thereby resulting in a significant waste of time and effort.

### **The Inexperienced Buyer**

In other cases, the buyer's information is accurate, but the initial submission is chaotic, embarrassingly inadequate or out of touch with New York optics.

Allowing the brokers to review the package usually insures that the buyer's pluses and minuses will be organized for maximum or minimum impact, as the case may be.

### **But Interest and Ability Can Vary Greatly**

The above being said, sometimes the seller's broker is not cooperative or responsive, makes inappropriate demands or comments or is simply intent on coasting all the way to the closing, once the offer is accepted. When that happens, submitting the package directly to the managing agent may actually be a good idea. In almost all cases, however, the broker-added gloss to the Board package serves the interests of the parties and is the best way to handle submission of the documents.

### **As Seen on TV**

I relate the above not as a hypothetical, but based upon a conversation I had recently, where the phenomenon of refusing to allow the seller's broker prior review of the Board Package occurred on more than one occasion. Could downsizing and diminished net worth be causing potential buyers to exaggerate their status when offers are made, to be followed by a retreat of necessity when applications are actually submitted?

### **Residential Reality: Add Broker Review to the Contract**

One important remedy is to discuss privacy and disclosure concerns as soon as possible after the offer is accepted. A better solution is to eliminate the buyer's possible refusal to allow review of the Board package prior to submission by contractually requiring review by the brokers in the co-op or condo contract. In most cases, the buyer's attorney will not object to this standard operating procedure. If an objection is raised, it is an opportunity for the seller to reconsider whether he or she has accepted the right offer.

Thanks: To Malcolm Carter, for posting a version of this article earlier this month on his "[service you can trust](#)" blog.

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